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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THOMAS MATTHEWS, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

XYZIES, LLC d/b/a XYZIES,

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE CONSUMER
PROTECTION ACT (TCPA),
47 U.S.C. §§ 227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. Plaintiff THOMAS MATTHEWS (“Plaintiff”), individually and on behalf of all others similarly situated, brings this nationwide Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant XYZIES, LLC d/b/a XYZIES (“Defendant”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.*, (“TCPA”) and related regulations, thereby invading Plaintiff’s privacy, specifically for claims under the National Do Not Call provision of 47 C.F.R. § 64.1200(c).

2. In 1991, Congress passed the TCPA in response to complaints about certain telemarketing practices. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.

3. The United States Court of Appeals for the Ninth Circuit has held that “[u]nsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA ‘need not allege any *additional* harm beyond the one Congress has identified.’” *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS 1591, at *12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (emphasis original)).

4. Although a caller may obtain prior express consent from a consumer, prior express consent may nevertheless be revoked.

5. The right to revocation is consistent with the common law principle that consent is revocable and honors the purpose of the TPCA.

6. Plaintiff alleges as follows upon personal knowledge as to himself and

1 his own acts and experiences, and, as to all other matters, upon information and
2 belief, including investigation conducted by his attorneys.

3 7. While many violations are described below with specificity, this
4 Complaint alleges violations of the statutes cited in their entirety.

5 8. Unless otherwise stated, Plaintiff alleges that any violations by
6 Defendant was knowing and intentional, and that Defendant did not maintain
7 procedures reasonably adapted to avoid any such violation.

8 9. Unless otherwise indicated, the use of any Defendant's name in this
9 Complaint includes all agents, employees, vendors, officers, members, directors,
10 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives,
11 and insurers of that Defendant named.

12 **JURISDICTION AND VENUE**

13 10. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331
14 because this case arises out of violations of federal law. 47 U.S.C. § 227(c).

15 11. Because Defendant conducts business within the State of California,
16 personal jurisdiction is established.

17 12. Venue is proper in the United States District Court for the Central
18 District of California pursuant to 18 U.S.C. § 1391 because the conduct complained
19 of herein occurred within this judicial district and many of the acts and transactions
20 giving rise to this action occurred in this district because:

- 21 (a) Defendant is authorized to conduct business in this district and
22 has intentionally availed itself of the laws and markets within this
23 district;
- 24 (b) Defendant is located in this district;
- 25 (b) Defendant does substantial business within this district;
- 26 (c) Defendant is subject to personal jurisdiction in this judicial
27 district because Defendant has availed itself of the laws and
28 markets within this district; and,

(d) the harm to Plaintiff originated from within this judicial district.

PARTIES

13. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of Virginia. Plaintiff is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(39).

14. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a domestic limited liability company whose principal place of business and/or headquarters is located in Irvine, California. Defendant is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(39). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and within this judicial district.

FACTUAL ALLEGATIONS

15. According to its website, Defendant partners with some of the largest telecom companies in the market to offer services in cable, internet, phone, and wireless products.¹

16. Defendant’s website further indicates that it has been operating since 1992.²

17. Defendant’s website also states: “by empowering partners with insight, knowledge, and incentives through our products and services, we can help businesses save money, time and effort while exponentially increasing sales.”³

18. In Defendant’s overzealous attempt to market its services and grow profits, Defendant knowingly and willfully made (and continues to make) unsolicited telemarketing phone calls without the prior express written consent of the call recipients.

19. Through this method, Defendant has invaded the personal privacy of

¹ <https://xyzies.com/about> (last visited February 12, 2024).

² <https://xyzies.com/about-us/> (last visited February 12, 2024).

³ *Id.*

1 Plaintiff and members of the Class.

2 20. Plaintiff's cellular telephone number ending in 8364 was registered with
3 the National Do Not Call Registry on or about August 31, 2021.

4 21. Plaintiff did not provide Defendant with his cellular telephone number at
5 any point in time, nor did he give permission for Defendant to call it.

6 22. Plaintiff did not have an established business relationship with
7 Defendant during the time of the telephone solicitations from Defendant.

8 23. Plaintiff did not have a personal relationship with Defendant at any point
9 in time.

10 24. Plaintiff did not give Defendant prior express invitation or consent in
11 writing for Defendant to call Plaintiff's personal cellular telephone for marketing or
12 solicitation purposes.

13 25. Despite Plaintiff's cellular telephone number being registered on the
14 National Do Not Call Registry for over 31 days, Defendant made several unsolicited
15 telemarketing calls to Plaintiff on his cellular telephone from Defendant's telephone
16 numbers 540-778-3283, 540-778-2540, 540-778-2862, and 540-778-4869.

17 26. Specifically, on or around August 17, 2023, Defendant made an
18 unsolicited telemarketing call to Plaintiff on his cellular telephone from 540-778-
19 3283. Plaintiff rejected this call.

20 27. On or around October 16, 2023, Defendant made another unsolicited
21 telemarketing call to Plaintiff on his cellular phone from 540-778-2540. Plaintiff
22 rejected this call.

23 28. On or around October 16, 2023, Defendant made an unsolicited
24 telemarketing call to Plaintiff on his cellular phone from 540-778-2862. Plaintiff
25 answered this call and Defendant attempted to provide Plaintiff with information
26 regarding internet services. However, Plaintiff expressed he was not interested and
27 hung up.

28 29. On or around October 22, 2023, Defendant made yet another unsolicited

1 telemarketing call to Plaintiff on his cellular phone from 540-778-4869. During this
2 call, Defendant advertised government services offering free internet to seniors to
3 Plaintiff. Plaintiff was then transferred to one of Defendant's agents, and then
4 transferred to "Mark" who was the manager, in order to get more information.

5 30. On or around November 16, 2023, Defendant made another unsolicited
6 telemarketing call to Plaintiff on his cellular telephone from 540-778-2862.

7 31. On or around November 22, 2023, Defendant made yet another
8 unsolicited telemarketing call to Plaintiff on his cellular telephone from 540-778-
9 4869.

10 32. Plaintiff attempted to send a letter to complain to the Better Business
11 Bureau in order to stop the flurry of invasive and unsolicited phone calls by
12 Defendant; however, Plaintiff's efforts were futile as the calls continued to come in.

13 33. Such calls constitute telephone solicitations pursuant to 47 C.F.R. §
14 64.1200(c), as they were an attempt to promote or sell Defendant's services related to
15 internet services.

16 34. Plaintiff received more than two telephone solicitations from Defendant
17 within a 12-month period.

18 35. Defendant's unsolicited telephone calls constituted telemarketing and
19 had a commercial purpose.

20 36. Upon information and belief, Defendant did not make the telephone
21 solicitations in error.

22 37. Upon information and belief, at all relevant times, Defendant failed to
23 establish and implement reasonable practices and procedures to effectively prevent
24 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
25 227(c)(5), including 47 C.F.R. § 64.1200(c).

26 38. Upon information and belief, Defendant made the same or substantially
27 similar above-described telephone solicitations *en masse* to thousands of consumers
28 nationwide.

1 39. Because Plaintiff is alerted when a call is made to Plaintiff's cellular
2 telephone, the unsolicited telephone solicitation that Defendant transmitted to
3 Plaintiff's cellular device invaded Plaintiff's privacy, was a nuisance, and distracted
4 and aggravated Plaintiff upon receipt.

5 40. Plaintiff was personally affected and damaged by Defendant's
6 aforementioned conduct because Plaintiff suffered an invasion of a legally protected
7 interest in privacy, which is specifically protected by the TCPA. Plaintiff was
8 frustrated and distressed that Defendant annoyed Plaintiff with unwanted telephonic
9 solicitations, without Plaintiff's prior express written consent, and while Plaintiff's
10 telephone number was registered on the National Do Not Call Registry.

11 41. Defendant's telephonic communications forced Plaintiff and Class
12 members to live without the utility of their cellular telephones by forcing Plaintiff and
13 Class members to silence their cellular telephones and/or block incoming numbers
14 and/or interrupted their desired use of their cellular telephones.

15 42. The TCPA was intended to give individuals control over how and where
16 they receive telephonic communications. When Defendant send such text messages to
17 consumers without their consent, Defendant fails to respect the limitations imposed
18 by the TCPA. In doing so, Defendant invade Plaintiff and similarly situated persons'
19 privacy and violates the spirit and intent behind the TCPA.

20 43. Through the above conduct, Defendant violated 47 U.S.C. §§ 227, *et*
21 *seq.* and the National Do Not Call provision of 47 C.F.R. § 64.1200(c).

22 **CLASS ACTION ALLEGATIONS**

23 44. Plaintiff brings this action on behalf of himself and on behalf of all
24 others similarly situated (the "Class").

25 45. Plaintiff seeks to represent, and is a member of, the Class, consisting of:

26 All persons within the United States, registered on the National
27 Do Not Call Registry for at least 31 days, to whom Defendant
28 and/or a third party acting on Defendant's behalf, made two
 more telephone solicitations that promoted Defendant's
 products or services, to a cellular telephone number within any

1 twelve-month period, within the four (4) years prior to the filing
2 of the Complaint.

3 46. Defendant and its employees or agents are excluded from the Class.
4 Plaintiff does not know the number of members in the Class, but believes the Class
5 members number in the thousands, if not more. Thus, this matter should be certified
6 as a Class action to assist in the expeditious litigation of this matter.

7 47. Plaintiff and members of the Class were harmed by the acts of
8 Defendant in at least the following ways: Defendant, either directly or through its
9 agents, illegally contacted Plaintiff and the Class members via their telephones,
10 whether cellular telephones or otherwise, for solicitation purposes, thereby invading
11 the privacy of said Plaintiff and the Class members whose cellular telephone numbers
12 were on the National Do Not Call Registry. Plaintiff and the Class members were
13 damaged thereby.

14 48. This suit seeks only damages and injunctive relief for recovery of
15 economic injury on behalf of the Class, and it expressly is not intended to request any
16 recovery for personal injury and claims related thereto. Plaintiff reserves the right to
17 expand the Class definition to seek recovery on behalf of additional persons as
18 warranted as facts are learned in further investigation and discovery.

19 49. The joinder of the Class members is impractical and the disposition of
20 their claims in the Class action will provide substantial benefits both to the parties
21 and to the Court. The Class can be identified through Defendant's records or
22 Defendant's agents' records and the National Do Not Call Registry.

23 50. There is a well-defined community of interest in the questions of law
24 and fact involved affecting the parties to be represented. The questions of law and
25 fact common to the Class predominate over questions which may affect individual
26 Class members, including the following:

- 27 a. Whether, within the four years prior to the filing of this Complaint,
28 Defendant or its agents placed more than one telephone solicitation to

the members of the Class whose telephone numbers were on the National Do Not Call Registry and who had neither an established business relationship nor personal relationship with Defendant;

b. Whether Defendant obtained prior express written consent to place telephone solicitations to Plaintiff or the Class members' telephones;

c. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and

d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

51. As a person who received numerous telephone solicitations from Defendant within a 12-month period, who did not have an established business relationship or personal relationship with Defendant, and who did not provide Defendant prior express invitation or permission to receive telephone solicitations, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

52. Plaintiff and the members of the Class have all suffered irreparable harm and invasion of a legally protected interest in privacy, which is specifically addressed and protected by the TCPA, as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to be damaged and face irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

53. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

54. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply

with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

55. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TCPA

47 U.S.C. §§ 227, *ET SEQ.*

56. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

57. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227, *et seq.*, including implementing regulation 47 C.F.R. § 64.1200(c).

58. As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*, Plaintiff and each member of the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

59. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA

47 U.S.C. §§ 227, *ET SEQ.*

60. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

61. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227, *et seq.*, including implementing regulation 47 C.F.R. § 65.1200(c).

62. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227, *et seq.*, Plaintiff and each member of the Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

63. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

- An Order certifying this action to be as a Class Action pursuant to Federal Rule of Civil Procedure 23, establishing the defined Class and any subclasses the Court deems appropriate, appointing Plaintiff is a proper representative of the Class, and appointing Plaintiff's Counsel as Class Counsel;
- An Order declaring Defendant's conduct, as alleged above, was in violation of the TCPA and the National Do Not Call provision of 47 C.F.R. § 64.1200(c);
- As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff seeks for himself and each Class member: (i) \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5); (ii) injunctive relief prohibiting such conduct in the future pursuant to 47 U.S.C. § 227(c)(5)(A); (iii) costs of suit; (iv) pre and post-judgment interest; (v) reasonable attorneys' fees pursuant to, *inter alia*, the common fund doctrine; (vi) any other relief the Court may deem just and proper; and

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff seeks for himself and each Class member: (i) \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5); (ii) injunctive relief prohibiting such conduct in the future pursuant to 47 U.S.C. § 227(c)(5)(A); (iii) costs of suit; (iv) pre and post-judgment interest; (v) reasonable attorneys' fees pursuant to, *inter alia*, the common fund doctrine; and (vi) any other relief the Court may deem just and proper.
- Costs of suit.
- Pre and post-judgment interest, to the extent permitted by applicable law.
- Reasonable attorneys' fees to Plaintiff's counsel pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5 and the common fund doctrine.
- Any other relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

64. Plaintiff is entitled to, and demands, a trial by jury on all issues so triable.

Dated: February 16, 2024

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

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